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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,625	02/19/2002	Philippe Moquin	SMB 2 0962	5120
7590	11/28/2003		EXAMINER	
James W. McKee Fay, Sharpe, Fagan Minnich & McKee, LLP 1100 Superior Avenue, 7th Floor Cleveland, OH 44114-2518			NGUYEN, TUAN DUC	
			ART UNIT	PAPER NUMBER
			2643	8
DATE MAILED: 11/28/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/078,625	MOQUIN ET AL.	
	Examiner	Art Unit	
	Tuan D. Nguyen	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent number 4,349,082 (Gastmeier).

Regarding claim 1, Gastmeier discloses a gasket for use with a microphone, comprising: at least one tube (column 1 line 68 item 10) for receiving said microphone and for directing sound thereto, said tube giving rise to a characteristic acoustical response for said microphone; and a perforated membrane (column 2 lines 7-8 item 18) within said tube and constructed integrally therewith for modifying the acoustical response of said microphone.

Regarding claim 2, Gastmeier also shows the perforated membrane is located adjacent said microphone (figure 5).

Regarding claim 3, Gastmeier also shows wherein said membrane is perforated with a plurality of holes distributed evenly across said membrane (figure 2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent number 4,349,082 (Gastmeier) in view of U.S. patent number 4,028,504 (Massa).

Regarding claim 4, Gastmeier does not disclose wherein said tube is approximately 15 mm in length to provide a 4000 Hz cut-off frequency and to provide significant electrostatic discharge protection.

However, Massa teaches a shock mount for transducer which increases the sensitivity of the transducer within the approximate audio frequency region 1 KHz to 20 KHz that the ratio of diameter to length of the tubular opening (D/L) (column 3 lines 9-16).

Therefore, it would have been obvious to a one of ordinary skill in the art at the time of the invention was made to use the tube length by Massa in Gastmeier for electrostatic discharge protection.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent number 4,349,082 (Gastmeier).

Regarding claim 5, Gastmeier does not disclose a wherein said membrane is approximately 2.5 mm in diameter and 0.5 mm thick, and nine square holes of 0.25 mm are evenly distributed across said membrane.

However, Gastmeier disclose an approximate size of the acoustic resistance (column 2 lines 35-66).

Therefore, it would have been obvious to a one of ordinary skill in the art at the time of the invention was made to use the approximate dimension of the acoustic resistance by Gastmeier for sound resistance and electrostatic discharge protection in a different application.

Response to Amendment

6. Applicant's arguments filed on 09/03/2003 have been fully considered but they are not persuasive. Responding to the arguments on page 3 about "a perforated membrane within said tube and constructed integrally therewith, as recited by claim 1" and "a thin perforated membrane is moulded into the gasket", the limitation "constructed integrally therewith" by the Webster Dictionary is that elements may be formed as a unit and related to each other. It does not require to be moulded. The examiner agrees with the applicant that a thin perforated membrane is moulded into the gasket according the applicant's specification. However, the applicant should note that this limitation is not included in the claim 1 and which should be recited in the claim and clearly supported by the specification.

Conclusion

7. **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. Any response to this final action should be mailed to:

**Commissioner of Patents and Trademarks
Washington, D.C. 20231**

Or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE"), or

(703) 305-9508, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Art Unit: 2643

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,
Crystal Park II,
2121 Crystal Drive,
Arlington, Virginia 22202**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan D. Nguyen whose telephone number is (703) 305-7168. The examiner can normally be reached on M-F 6:30-3:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

TDN
11/18/03



CURTIS KUNTZ
SEARCH/EXAMINER
TECHNOLOGY CENTER 2000